FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 24 1916
CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1915

JOSEPH D. McGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York,

Petitioners,

against

CARTER & WEEKES STEVEDORING COMPANY,

Respondent.

No. 518 29

JOSEPH D. McGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York,

Petitioners,

against

JOHN T. CLARK & SON,

Respondent.

No. 519 30

APPENDIX OF STATUTES.

JOHN J. BENNETT,
Corporation Counsel of the City of New York,
Counsel for Petitioners,
Municipal Building,
New York, N. Y.

INDEX

PAGE

Appendix A. Provisions of New York City Local Law No. 78 of 1940 1

Appendix B. Provisions of State Enabling Act, Laws of New York 1940, Chapter 245 (Enabling Act for Local Law No. 78 of 1940) 18

Appendix C. Provisions of Article 2-B of General City Law, Laws of New York 1941, Chapter 199 (Enabling Act for Local Law No. 47 of 1941) 24

APPENDIX A

Provisions of Local Law

LOCAL LAWS OF THE CITY OF NEW YORK

FOR THE YEAR 1940.

No. 78

A LOCAL LAW to amend the administrative code of the city of New York, in relation to raising revenue for the purpose of relieving the people of the city of New York from the hardships and suffering caused by unemployment and the effects thereof on the public health and welfare, by re-enacting and imposing a tax upon the privilege of carrying on or exercising, for gain or profit, within the city of New York, any trade, business, profession, vocation, commercial activity or financial business, or of making sales to persons within such city, and extending the time during which such tax shall be imposed.

Became a law June 29, 1940, with the approval of the Mayor. Passed by the local legislative body of the city of New York.

Be it enacted by the Council as follows:

Section 1. Title R of chapter forty-one of the administrative code of the city of New York, as added by local law number one hundred three for the year nineteen hundred thirty-nine, is hereby amended to read as follows:

Appendix A

TITLE R

General Business and Financial Tax

§R41-1.0. **Definitions.** When used in this title the following terms shall mean or include:

1. "Person." Includes an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals carrying on or exercising for gain any trade, business, profession, vocation, or commercial activity within the city.

2. "Financial business." The services and transactions of private banks, private bankers, dealers and brokers in money, credits, commercial paper, bonds, notes, securities and stocks, monetary metals, factors, and commission merchants, and where the comptroller shall so determine as a fact, dealers in merchandise where the spread or difference between the cost of goods sold and the sale price is analogous to or in the nature of a commission and does not in any event exceed three percentum of the cost of goods sold, and such determination of fact by the comptroller shall be final.

3. "Receipts." The gross receipts received in, or by reason of any sale made or services rendered or commercial or business transaction had in the city, including cash, credits and property of any kind or nature, without any deductions therefrom on account of the cost of the property sold, the cost of materials used, labor or service or other cost, interest or discount paid, or any other expense whatsoever, but shall not include receipts from the sales, services or transactions hereinafter in schedule A specified.

Appendix A

For the purpose of determining receipts from the business of insurance, such receipts shall be taken to mean receipts from premiums received from risks in the city, whether by mutual or stock companies, domestic or foreign, without any deductions therefrom for any cost or expense whatsoever. The comptroller shall determine from such data as he shall require from insurance companies subject to the provisions of this title, the amount of such receipts and shall ascertain the amount of the tax in accordance with such determination. The business of insurance shall not be deemed to be a financial business.

SCHEDULE A

Receipts of the city and state of New York and of the government of the United States, only in so far as the receipts of the United States are immune from local taxation under the constitution of the United States.

Receipts of charitable and religious corporations or associations whose income is exempted from taxation under the laws of the state of New York.

Receipts of national banking associations, banks, trust companies and mutual savings banks subject to the provisions of articles three, five, six and seven of the banking law of the state of New York.

Receipts of co-operative corporations organized under the provisions of the co-operative corporations laws of the state of New York, or agricultural co-operatives organized under the authority of the federal government.

Receipts from sales of real estate and/or rents derived from real estate.

Receipts of public utility corporations, if otherwise taxed on gross income or receipts pursuant to the authority granted by chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as amended.

Appendix A

Receipts of a non-profit membership corporation for the purpose of holding a world's fair and confining its operations solely to preparing for and conducting such fair.

Wages and salaries of individuals.

4. "Gross income." The total amount of receipts of a person engaged in a financial business, excluding the cost of property sold, or moneys or credits received in repayment of advances, credits and loans, but not to exceed the principal amount thereof and excluding deposits.

5. "Exercising any profession, vocation, trade, business or commercial activity." Does not include labor or services rendered by an individual for a wage or salary.

6. "Comptroller." The comptroller of the city.

7. "Treasurer." The treasurer of the city.

§R41-2.0. **Imposition of tax.** a. For the privilege of carrying on or exercising for gain or profit within the city any trade, business, profession, vocation or commercial activity other than a financial business, or of making sales to persons within such city, for each of the periods of one year, or any part thereof, beginning on July first of the years nineteen hundred thirty-nine and nineteen hundred forty, every person shall pay an excise tax which shall be equal to one-tenth of one percentum upon all receipts received in and/or allocable to the city from such profession, vocation, trade, business or commercial activity exercised or carried on by him during the calendar year in which such period shall commence, or as provided in subdivision c hereof; and for the privilege of carrying on any financial business, as defined in subdivision two of section R41-1.0 of this title, for gain or profit within the city for each of the periods of one year, or any part thereof, beginning on July first of the years nineteen hundred thirty-nine and

nineteen hundred forty, every person shall pay an excise tax which shall be equal to one-fifth of one percentum upon all gross income received in and/or allocable to the city received from such financial business carried on by him in the city during the calendar year in which such period shall commence, or as provided in subdivision c hereof. However, there shall be no tax imposed on those trades, businesses, professions, vocations or commercial activities where the gross receipts do not exceed ten thousand dollars per annum, and no return need be filed.

b. Where a receipt in its entirety cannot be subjected to the tax imposed by this title by reason of the provisions of the constitution of the United States or any other provision of law, the comptroller shall establish rules and regulations and/or methods of allocation and evaluation to the end that only that part of such receipt which is properly attributable and allocable to the doing of business in the city shall be taxed hereunder. The comptroller may make such allocation, with due regard to the nature of the business concerned, on the basis of mileage, division of the receipt according to the number of jurisdictions in which it may be taxed, the ratio of the value of the property or assets of the taxpayer owned and situated in the city to the total property or assets of the taxpayer wherever owned and situated and/or any other method or methods of allocation other than the foregoing calculated to effect a fair and proper allocation in accordance with the purposes of this provision.

c. If a person subject to the tax imposed by this title was not engaged in carrying on a profession, vocation, trade, business or commercial activity or financial business in the city during the whole of the calendar year referred to in subdivision a of this section, he shall pay the tax imposed by this title measured by his receipts or gross income, as the case may be, during the period of one year from the date when he became so engaged; and if such person shall not have been so engaged for an entire year prior to June

thirtieth of the year in which the tax imposed by this title becomes due and payable, then measured by his receipts or gross income for the period during which he was so engaged.

d. If any person liable for the tax after July first, nineteen hundred thirty-nine, acquired the assets or franchises of, or was merged or consolidated with another person, the person liable for the tax shall report as its receipts or gross income by which the tax is to be measured, the receipts or gross income of such other person together with its own receipts or gross income as provided in this section.

§R41-3.0. **Presumption and burden of proof.** For the purpose of the proper administration of this title and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts are a proper measure of the tax until the contrary is established, and the burden of proving that any payment or consideration received by any person subject to the tax hereby imposed was not received in or by reason of a sale made or service rendered or transaction had in the city shall be upon the person who received it.

§R41-4.0. **Filing of returns.** Every person subject to tax under this title shall on or before the fifteenth day of June of the years in which the one-year periods referred to in subdivision a of section R41-2.0 of this title shall end, file a return under oath with the treasurer, except that any person required to file a return for a period beyond the first day of May of any such year may file such return on or before the first day of August thereof. The comptroller, if he deems it necessary to insure the payment of the tax hereby imposed, may require returns of receipts from other persons. The forms of such returns shall be prescribed by the comptroller and shall contain such information as he may deem necessary for the proper administration of this title; and the comptroller or treasurer or their duly author-

ized agents or employees shall be empowered to require supplemental returns and to inspect the books and records of any person as defined in this title pertaining to his receipts. Whenever the treasurer shall require supplemental returns, he shall promptly notify the comptroller thereof.

§R41-5.0, **Payment of tax.** At the time of filing a return as required by this title each person shall pay to the treasurer the tax imposed by this title. Such tax shall be due and payable on the last day on which such return is required to be filed, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of the tax due.

§R41-6.0. **Determination of tax.** If a return required by this title is not filed or if a return when filed is incorrect or insufficient, and the maker fails to file a corrected or sufficient return within twenty days after the same may be required by notice from the comptroller and treasurer they shall determine the amount of the tax due from such information as may be obtainable or on the basis of external indices, such as the number of employees of the person concerned, rentals paid by him, his stock on hand and/or other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days, apply to the comptroller for a hearing on such determination, or unless the comptroller and treasurer shall of their own motion redetermine such tax. After such hearing the comptroller shall give notice of his decision to the person liable for the tax. The determination of the comptroller shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the Civil Practice Act if instituted within thirty days after the giving of the notice of such

determination. Such proceeding shall not be instituted unless the amount of any tax sought to be reviewed with interest and penalties thereon, if any, shall have first been deposited with the treasurer and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceedings.

§R41-7.0. **Refunds.** In the manner herein provided the treasurer upon the order of the comptroller shall refund any tax, interest or penalty erroneously, illegally or unconstitutionally collected by or paid to him, under protest in writing, stating in detail the ground or grounds of the protest, if application to the comptroller therefor shall be made within one year from the payment thereof. For like cause and within the same period a refund may be so made on the initiative and order of the comptroller. Whenever a refund is made by the treasurer, pursuant to the order of the comptroller on the comptroller's own initiative or after a hearing by the compfroller as herein provided, the comptroller shall state his reasons for the refund in writing. A person shall not be entitled to a hearing in connection with such application for a refund if he has already had a hearing or had been given the opportunity of a hearing as provided in section R41-6.0 of this title. No refund shall be made of a tax, interest or penalty paid pursuant to a determination of the comptroller as provided in section R41-6.0 of this title, unless the comptroller, after a hearing as in said section provided, or of his own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding, pursuant to article seventy-eight of the Civil Practice Act that such determination was erroneous, illegal, unconstitutional or otherwise improper, in which event a refund with interest shall be made as pro-

vided upon the determination of such proceeding. An application to the comptroller for a refund made as herein provided shall be deemed an application for a revision of any tax, interest or penalty complained of and the comptroller shall receive evidence with respect thereto. After making his determination the comptroller shall give notice thereof to the person interested who shall be entitled to maintain a proceeding under article seventy-eight of the Civil Practice Act to review such determination if instituted within thirty days after such determination and an undertaking shall first be filed with the comptroller in such amount and with such sureties as a justice of the Supreme Court shall approve, to the effect that if such order be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the certiorari proceeding.

§R41-8.0. **Reserves.** In cases where the taxpayer has paid any tax, interest or penalty under written protest stating in detail the ground or grounds therefor, has applied for a refund and has instituted proceedings under article seventy-eight of the Civil Practice Act to review a determination adverse to him on his application for refund, or has deposited the amount of tax assessed in connection with proceedings under section R41-6.0 of this title, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§R41-9.0. **Remedies exclusive.** The remedies provided by sections R41-6.0 and R41-7.0 of this title shall be the exclusive remedies available to any person for the review of tax liability imposed by this title; and no determination or proposed determination of tax or determination on an application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any legal or equitable action or pro-

ceeding other than proceedings under article seventy-eight of the Civil Practice Act; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the treasurer prior to the institution of such suit and posts a bond for costs as provided in section R41-6.0 of this title.

§R41-10.0. **Proceedings to recover tax.** a. Whenever any person shall fail to pay any tax, penalty, or interest imposed by this title as therein provided, the corporation counsel shall, upon the request of the comptroller or treasurer, bring an action to enforce payment by the taxpayer, who shall be personally liable for the same. If, however, the treasurer in his discretion believes that a taxpayer subject to the provision of this title or of articles eight to twelve inclusive of title E of chapter forty-one of the code is about to cease business, leave the state or remove or dissipate the assets out of which the tax, interest or penalties might be satisfied and that any such tax, interest or penalty will not be paid when due, he may declare such tax, interest or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternative remedy the treasurer may issue a warrant, directed to the sheriff of any county within the city, commanding him to levy upon and sell the real and personal property of such person which may be found within his county, for the payment of the amount thereof, with any penalties, interest and the cost of executing the warrant and to return such warrant to the treasurer and to pay him the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant, file with the clerk of his county a copy thereof and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the

tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions against property upon judgments of a court of record, and for services in executing the warrant he shall be entitled to the same fees which he may collect in the same manner. In the discretion of the treasurer a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the power conferred by law upon sheriffs, but he shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the treasurer may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

§R41-110. **General powers of the comptroller.** In addition to the powers granted to the comptroller in this title, he is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this title and the purposes thereof;

2. To request information from the tax commission, superintendent of banks, superintendent of insurance and other agencies of the state of New York or treasury department of the United States relative to any person, and to afford information to such tax commission or such treasury department relative to any person, any other provision in this title to the contrary notwithstanding;

3. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and, in his discretion, to remit penalties, but not interest at the rate of six per cent per annum; and to compromise disputed claims in connection with the taxes hereby imposed;

4. To require all persons doing business in the city to keep such records as he may prescribe;

5. To delegate his functions hereunder to a deputy comptroller or other employee or employees of the comptroller's office and, with the consent of the treasurer, to the treasurer or employees of the department of finance;

6. To determine whether any trade, business, profession, vocation, or commercial activity shall be in whole or in part classified as financial business or otherwise; and, in case any trade, business, profession, vocation or commercial activity shall be classified in part as financial business, to set forth the manner of computing the tax hereunder upon each part in accordance with such classification;

7. To prescribe methods for determining the amount of receipts and/or gross income received by reason of any sale made or service rendered or commercial or business transaction had;

8. To prescribe methods for determining allocations of receipts to the city.

§R41-12.0. **General powers of the treasurer.** In addition to the powers granted to the treasurer in this title he is hereby authorized and empowered:

1. To delegate his functions hereunder to a deputy treasurer or other employee or employees of the department of finance; and, with the consent of the comptroller, to the comptroller or any of his employees;

2. To extend, for cause shown, the time of filing any return for a period not exceeding thirty days; and in such event promptly to notify the comptroller of any extensions;

3. To request information from the tax commission, superintendent of banks, superintendent of insurance and other agencies of the state of New York and of agencies of the United States relative to any person; and to afford information to the tax commission and treasury department relative to any person, any other provision of this title to the contrary notwithstanding.

§1341-13.0. **Administration of oaths and compelling testimony.** a. The comptroller or treasurer or his employee duly designated and authorized by them shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this title. The comptroller or treasurer shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this title, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or excused from attendance.

b. A justice of the Supreme Court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the comptroller or treasurer hereunder.

c. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the comptroller or treasurer hereunder shall be guilty of a misdemeanor, and punishment

for which shall be of a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

d. The officers who serve the comptroller's or treasurer's summons or subpoena hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the sheriffs of the counties within the city, and their duly appointed deputies.

§R41-14.0, **Penalties and interest.** a. Any person failing to file a return or to pay over any tax to the treasurer within the time required by this title shall be subject to a penalty of five percentum of the amount of the tax due, plus interest at the rate of one percentum of such tax for each month of delay or fraction thereof excepting the first month, after such return was required to be filed or such tax becomes due; but the comptroller, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percentum per annum. Such penalty shall be paid and disposed of in the same manner as other revenues from this title. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this title.

b. Any person and any officer of a corporation or copartnership filing or causing to be filed any return, certificate, affidavit or statement required or authorized by this title which is wilfully false and any person who shall fail to file a return as required under this title, and the officers of any corporation which shall so fail, and any person and any officer of a corporation failing to keep the records required by subdivision four of section R41-11.0 of this title shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or

imprisonment for not more than one year, or both such fine and imprisonment. The certificate of the comptroller or treasurer to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this title shall be prima facie evidence thereof.

§R41-15.0. **Notices and limitations of time.** a. Any notice authorized or required under the provisions of this title may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this title or in any application made by him, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this title by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the Civil Practice Act or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax, interest or penalty provided by this title. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the

amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

§R41-16.0. **Returns to be secret.** Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the comptroller or treasurer or any officer or employee of the comptroller's office or the department of finance to divulge or make known in any manner the receipts or any other information relating to the business of a taxpayer contained in any return required under this title. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the city or the comptroller or treasurer or on behalf of any party to any action or proceeding under the provisions of this title when the returns or facts shown thereby are directly involved in such action or proceeding in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the fact shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel of the city or other legal representatives of the city of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the comptroller orders them to be destroyed.

Appendix A

§R41-17.0. **Separability.** If any provision of this title, or the application thereof to any person or circumstances is held invalid, the remainder of this title, and the application of such provisions to other persons or circumstances shall not be affected thereby.

§R41-18.0. **Construction and enforcement.** This title shall be construed and enforced in conformity with chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four as amended, pursuant to which it is enacted.

§2. This local law shall take effect July first, nineteen hundred forty.

APPENDIX B

Provisions of State Enabling Act

LAWS OF NEW YORK

1940

CHAPTER 245

AN ACT to amend chapter eight hundred and seventy-three of the laws of nineteen hundred thirty-four, re-entitled by chapter six hundred and fifty-nine of the laws of nineteen hundred thirty-nine, "An act to enable, temporarily, any city of the state having a population of one million inhabitants or more to adopt and amend local laws, imposing certain specified types of taxes which the legislature has or would have power and authority to impose to relieve the people of any such city from the hardships and suffering caused by unemployment, to provide for the review of such taxes, and to limit the application of such local laws," in relation to authorizing specified types of taxes for relief and welfare and providing for the review thereof

Became a law March 30, 1940, with the approval of the Governor. Passed, on message of necessity, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections one and two of chapter eight hundred and seventy-three of the laws of nineteen hundred thirty-four, re-entitled by chapter six hundred and fifty-nine of the laws of nineteen hundred thirty-nine "An act to enable, temporarily, any city of the state having a population of one million inhabitants or more to adopt and amend local laws, imposing certain specified types of taxes which the legislature has or would have power and authority to im-

pose to relieve the people of any such city from the hardships and suffering caused by unemployment, to provide for the review of such taxes, and to limit the application of such local laws," as last amended by chapter six hundred and fifty-nine of the laws of nineteen hundred thirty-nine, are hereby amended to read as follows:

Section 1. Notwithstanding any other provisions of law to the contrary, any city of the state having a population of one million inhabitants or more acting through its local legislative body, is hereby authorized and empowered until July first, nineteen hundred forty-one to adopt and amend local laws imposing in any such city any or all of the following types of taxes which the legislature has or would have power and authority to impose to relieve the people of any such city from the hardships and suffering caused by unemployment, such taxes to be collected and administered by the fiscal officers of such city in the same manner as other taxes which are now collected and administered by such officers in accordance with the charter or administrative code of any such city: (a) Taxes on the use, sale, exchange, transfer, storage, withdrawal, retention, installation or license to use or consume tangible personal property, other than, on or after July first, nineteen hundred forty, cigarettes.

(b) Taxes on the privilege of doing any business, engaging in any trade, calling, occupation or profession; owning, holding or occupying any property; possessing or exercising any franchise or franchises; or on the gross receipts from sales to persons within such city.

(c) Taxes on the sale or performance of services including utility services but excluding professional services.

The tax or taxes imposed pursuant to such local laws shall be effective only during the period commencing when this act becomes effective and ending July first, nineteen

hundred forty-one, or any portion of such period. A tax imposed hereunder shall have application only within the territorial limits of any such city and shall be in addition to any and all other taxes.

This act shall not authorize the imposition of a tax on incomes or upon the transfers of estates of deceased persons, or upon the gross income from the operation of hotels, multiple dwellings or office buildings by persons in the business of operating or leasing sleeping or parlor railroad cars or of operating railroads other than street surface, rapid transit, subways and elevated railroads, or upon gross incomes or gross operating incomes of persons subject to taxation under the provisions of section one hundred eighty-six-a of the tax law, except in accordance with the provisions of section twenty-b of the general city law; or upon interest or dividends received from a corporation by a person referred to in this paragraph.

This act shall not authorize the imposition of a tax on any transaction, originating and/or consummated outside of the territorial limits of any such city, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

This act shall not authorize the imposition of a tax on a non-resident of such city or on account of any transaction by or with a non-resident of such city, except when imposed without discrimination as between residents and non-residents, on account of tangible property actually located or income earned, or trades, businesses or professions carried on within such city, or on account of transfers, retail sales or other transactions actually made or consummated within such city by a non-resident while within such city. A corporation shall not be deemed a non-resident by reason of the fact its principal place of business is not within the city.

Except as expressly otherwise in this act provided, nothing herein contained shall limit or prevent the imposition

of a tax on gross incomes or a tax on gross receipts of persons, firms and corporations doing business in any such city.

No such person, firm or corporation, however, shall be subject to the imposition of more than one tax by any such city on gross income or gross receipts for the privilege of doing business under the provisions of this act.

A person who has a permanent place of abode without such city and lives more than seven months of the year out of such city shall be deemed a non-resident within the meaning of this act.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice act if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice act shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected an application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice act, provided, however, that such

proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed under local laws enacted prior to July first, nineteen hundred thirty-eight, after July first, nineteen hundred forty-one, and with respect to taxes imposed under local laws enacted subsequent to July first, nineteen hundred thirty-eight, after the expiration of more than three years from the date of the filing of a return, provided however, that where no return has been filed as provided by law the tax may be assessed at any time.

§ 2. Revenues resulting from the imposition of taxes authorized by this act shall be paid into the treasury of any such city and shall not be credited or deposited in the general fund of any such city, but shall be deposited in a separate bank account or accounts and shall be available and used solely and exclusively for paying the principal amount of any installment of principal and of interest due during the aforesaid period on account of the ten-year serial bonds sold to obtain moneys to pay for home relief and work relief in any such city in the month of November, nineteen hundred thirty-three; for defraying the cost of collecting and administering such taxes, but not in excess of such cost, during the year immediately preceding; and for the relief purposes for which such taxes have been imposed under the provisions of this act.

Notwithstanding the foregoing limitations, a sum not to exceed four million five hundred thousand dollars may be expended for old age assistance by any such city from the taxes imposed and collected hereunder prior to the first day of July, nineteen hundred forty.

Such legislative body may authorize the performance of public work for the relief purposes aforesaid to be paid for out of the tax or taxes imposed under this act and which may be undertaken other than by contract by such municipal corporation, during the period aforesaid, through and under its welfare or other department.

The provisions of this act shall be effective notwithstanding any provisions contained in any charter, or in any general, special or local laws to the contrary, and notwithstanding any such provisions therein contained requiring such work as may be undertaken to be let by contract.

§ 2. This act shall take effect immediately.

APPENDIX C

Provisions of Article 2-B of General City Law (Enabling Act for Local Law No. 47 of 1941)

LAWS OF NEW YORK

1941

Chapter 199

AN ACT to amend the general city law, to enable certain cities to impose and collect taxes on certain businesses

Became a law March 28, 1941, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter twenty-six of the laws of nineteen hundred nine, entitled "An act in relation to cities, constituting chapter twenty-one of the consolidated laws," is hereby amended by adding thereto a new article, to be article two-B, to read as follows:

ARTICLE 2-B

GENERAL BUSINESS AND FINANCIAL TAX AUTHORIZATION

Section 24-a. Certain cities authorized to impose taxes on certain businesses.

24-b. Authority to impose other taxes; limitations.

24-c. Revenues; disposition of.

§24-a. **Certain cities authorized to impose taxes on certain businesses.** Notwithstanding any other provisions of law to the contrary, any city having a population of one million or more, acting through its local legislative body, until July first, nineteen hundred forty-four, shall have

power to adopt and amend local laws imposing in any such city a tax upon persons carrying on or exercising for gain or profit within such city, any trade, business, profession, vocation or commercial activity, other than a financial business, or making sales to persons within such city, measured by the gross receipts from such activities carried on or sales made within the city, but not to exceed one-twentieth of one percentum of such gross receipts, and upon persons carrying on within any such city, any financial business, measured by the gross income from such financial business carried on within such city, but not to exceed one-tenth of one per centum of such gross income. In any such city in which the functions of the chief fiscal officer are divided between two or more officials, any such local law may assign the respective functions of each such official in assessing and collecting the tax. Every such local law in terms shall be, substantially, as follows:

GENERAL BUSINESS AND FINANCIAL TAX

(NOTE:—*Here follows the prescribed model law which is practically verbatim the provisions of the local law [Title R of the Administrative Code of the City of New York] set forth in Appendix A, at pages 2 to 17,* supra.)

§24-b. **Authority to impose other taxes; limitations.** Nothing in this article contained shall limit the power of any city to adopt or amend local laws imposing the tax authorized by section twenty-b of this chapter, as amended, or by chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as amended.

Nothing in this article contained shall be construed to refer to or authorize a tax such as is authorized to be imposed by subdivision b of section one of chapter eight hundred seventy-three of the laws of nineteen hundred thirty-four, as last amended, upon (a) the gross income of persons subject to the supervision of either division of the department of public service; (b) the gross income of persons engaged in the business of operating or leasing sleeping

and parlor railroad cars or operating railroads other than street surface, rapid transit, subway and elevated railroads; (c) the gross operating income of persons engaged in the business of operating omnibuses with a carrying capacity of more than seven persons who are not subject to the supervision of either division of the department of public service; (d) the gross income of persons constructing, owning, operating, managing or leasing electrical subways, conduits, ducts, subsidiary connections or similar structures and equipment upon, above, or under any public or private street, public or private avenue, highway, public or private place, road or ground in any such city, through which are run electrical conductors, either low or high tension, by itself, or by any person engaged in the business of affording telephonic or telegraphic communication for hire or in the business of manufacturing, generating, distributing or transmitting electricity; or (e) the gross operating income of persons not subject to the supervision of either division of the department of public service but furnishing or selling gas, electricity, steam, water, refrigeration, telephony or telegraphy, or furnishing or selling gas, electric, steam, water, refrigeration, telephone or telegraph service, or operating omnibuses (whether or not such operation is on the public streets), regardless of whether such furnishing or selling or operation constitutes the main activity of such person or is merely incidental thereto.

§24-c. **Revenues; disposition of.** Revenues resulting from the imposition of taxes authorized by this article two-b shall be paid into the treasury of the city imposing the same and may be credited to or deposited in the general fund of such city.

§2. Article two-b of such chapter, as added by chapter five hundred and two of the laws of nineteen hundred twenty-one, as amended by chapter six hundred and four of the laws of nineteen hundred twenty-three is hereby renumbered to be article two-c.

§3. This act shall take effect immediately.